

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Brickell	Team: Squad #1	CCRB Case #: 201500005	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/24/2014 5:30 PM	Location of Incident: Park Avenue and East 42nd Street in front of Grand Central Terminal	Precinct: 14	18 Mo. SOL 6/24/2016	EO SOL 6/24/2016	
Date/Time CV Reported Wed, 12/31/2014 12:42 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 12/31/2014 12:42 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ray Dutton	29141	936536	049 PCT
2. POM Santiago Inoa	11409	951839	049 PCT
3. SGT Christophe Ryan	4698	947446	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Carlos Pizarro	05087	939234	049 PCT
2. POM Taiyuen Lee	26345	948233	049 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ray Dutton	Abuse: PO Ray Dutton stopped § 87(2)(b)	
B.POM Santiago Inoa	Discourtesy: PO Santiago Inoa spoke discourteously to § 87(2)(b)	
C.POM Ray Dutton	Discourtesy: PO Ray Dutton spoke discourteously to § 87(2)(b)	
D.POM Santiago Inoa	Abuse: PO Santiago Inoa frisked § 87(2)(b)	
E.POM Santiago Inoa	Abuse: PO Santiago Inoa searched § 87(2)(b)	
F.POM Ray Dutton	Force: PO Ray Dutton used physical force against § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
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§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b)

At the time of the incident (the investigation was unable to determine the exact time), § 87(2)(b) danced behind a uniformed police officer, PO Ray Dutton, outside of a marked police van parked in front of Grand Central Terminal, at the intersection of East 42nd Street and Park Avenue in Manhattan. The incident occurred four days after two members of the NYPD were shot dead as they sat in their vehicle, and PO Dutton and another officer, PO Carlos Pizarro, were providing security for the van § 87(2)(b)

Upon seeing § 87(2)(b) the officer in the driver's seat, PO Santiago Inoa, opened the door and yelled to PO Dutton to alert him to § 87(2)(b)'s presence. There were two other officers in the van, Sgt. Christopher Ryan and PO Taiyuen Lee. PO Dutton turned around to confront § 87(2)(b) who stopped dancing. PO Dutton stopped § 87(2)(b) by placing him up against the van (**Allegation A**). PO Inoa asked § 87(2)(b) "The fuck are you doing behind him?" (**Allegation B**). § 87(2)(b) responded that he was "just dancing," and PO Dutton responded, "Are you fucking kidding me?" and "The fuck is wrong with you?" (**Allegation C**). PO Inoa told § 87(2)(b) to turn around before he frisked and allegedly searched § 87(2)(b) (**Allegation D and E**). PO Dutton continued to curse at § 87(2)(b) saying, "Are you fucking kidding me bro," and "Are you a fucking asshole," before saying, "Take a fucking walk," and pushing him in the left shoulder, at which point § 87(2)(b) fell to the ground (**Allegation F**). § 87(2)(b) was not arrested or summonsed.

Mediation, Civil and Criminal Histories

§ 87(2)(b)'s complaint was ineligible for mediation, as he filed a federal lawsuit against the NYPD, claiming unlawful detainment, and verbal and physical abuse seeking \$5,000,000 in compensation (encl. 6A – J). According to § 87(2)(b)'s attorney, as it is a federal lawsuit, there will not be any 50-h hearing. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) (encl. 3).
- PO Ray Dutton has been a member of the service for ten years, and there are no substantiated CCRB allegations against him (encl. 2A – B).
 - PO Dutton has one previous stop allegation pleaded against him, which was closed as exonerated.
 - He has eight previous force allegations against him, four of which were closed as exonerated, two as unfounded and two as unsubstantiated.
 - He has six previous discourtesy allegations against him, one of which was closed as exonerated, four as unsubstantiated, and one was withdrawn.
- PO Inoa has been a member of the service for three years, and this is the first CCRB complaint against him (encl. 2C).

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A – Abuse of Authority: PO Ray Dutton stopped § 87(2)(b)

It is undisputed by virtue of the video footage (see encl. 8A for transcription of footage), as well as PO Dutton’s testimony, that PO Dutton stopped § 87(2)(b)

According to PO Inoa and PO Dutton, PO Inoa yelled out to PO Dutton to alert him to the fact that § 87(2)(b) was behind him. PO Dutton turned around and § 87(2)(b) was standing directly in front of him, face to face. § 87(2)(b) seemed calm and was not doing anything other than standing when PO Dutton turned around, however, he feared for his safety because § 87(2)(b) was so close to him that he could have grabbed his gun, and because two officers had recently been executed. PO Dutton did not observe anything on § 87(2)(b)’s waistband that led him to believe that he had a weapon. PO Dutton asked § 87(2)(b) what he was doing, and he responded that he was just dancing. Based on the video footage, after § 87(2)(b) responded that he was just dancing PO Dutton placed him against the vehicle, at which time he was not free to leave.

In order to stop a person, an officer must have reasonable suspicion that the person is committing, or is about to commit a crime (People v. De Bour, 40 N.Y.2d 210 (1976) (encl. 0A – K).

§ 87(2)(g)

Allegation B – Discourtesy: PO Santiago Inoa spoke discourteously to § 87(2)(b)

Allegation C – Discourtesy: PO Ray Dutton spoke discourteously to § 87(2)(b)

It is undisputed by virtue of the video footage, as well as their respective testimonies, that PO Inoa and PO Dutton spoke discourteously to § 87(2)(b)

In certain stressful street encounters, an officer may use limited profanity where needed to gain compliance or maintain control of the incident (NYPD v. Court, OATH index # 78667/03 (encl. 00 – X)).

The video footage showed that § 87(2)(b) was calm and compliant throughout the entirety of the interaction. While PO Dutton said that he feared for his safety, as described above, at the time that the profane statements were made there were three officers standing around § 87(2)(b) and he had already responded that he was “just dancing.” Even after PO Inoa frisked § 87(2)(b) and he was found not to have any weapons, PO Dutton continued to curse at him, asking him, “Are you fucking kidding me, bro,” calling him a “fucking asshole,” and telling him to, “Take a fucking walk.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: PO Santiago Inoa frisked § 87(2)(b)

It is undisputed by virtue of the video footage and PO Inoa’s testimony that he frisked § 87(2)(b)

PO Inoa testified that he saw § 87(2)(b) walk up behind PO Dutton, and start flaring his arms and “jumping around.” PO Inoa did not know what § 87(2)(b) was doing, as § 87(2)(b) was facing away from him, and did not know whether § 87(2)(b) was going to attack PO Dutton. After reviewing the video footage, PO Inoa said that while it was clear what § 87(2)(b) was doing from the front angle, from the rear PO Inoa was unable to see what he was doing, and simply saw him waving his arms. PO Inoa said that it was possible that he was moving his hands towards his waistband while he was making the movements. Everyone was on edge because of the two officers that had been assassinated days earlier.

PO Inoa exited the vehicle to assist PO Dutton, who asked § 87(2)(b) what he was doing. § 87(2)(b) said that he was dancing, and PO Inoa asked him why he was dancing in the street and then had § 87(2)(b) turn around and frisked § 87(2)(b) for his safety and the safety of the other officers to make sure that § 87(2)(b) did not have a weapon. PO Inoa initially stated that there was nothing in § 87(2)(b)’s pockets that led him to believe that he had a weapon. When asked whether there were any bulges on § 87(2)(b)’s person that led PO Inoa to believe that § 87(2)(b) had a weapon, PO Inoa said that he had some objects in his pockets that formed bulges, however, PO Inoa did not recall which pockets contained the bulges, and was unable to describe the bulges in any way, including their shape or size. He did not see any clear outline that led him to believe that § 87(2)(b) had a weapon. PO Inoa did not articulate any additional factors that led to the frisk.

In order to frisk someone, an officer must have reasonable suspicion that a person is armed (People v. De Bour, 40 N.Y.2d 210 (1976) (encl. 0A – K). In People v. Harris, the court ruled that the officer was not justified in conducting a frisk for safety reasons based on an unidentifiable bulge (People v. Harris, 160 A.D.2d 515 (1990) (encl. 0Y – Z)).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Santiago Inoa searched § 87(2)(b)

As discussed above, it is undisputed that PO Inoa frisked § 87(2)(b) § 87(2)(b) further alleged that PO Inoa reached into his pockets when he did so, § 87(2)(g)

The video footage from the incident showed that PO Inoa had § 87(2)(b) turn and face the van, and that he moved his hands down his body, which corroborated the frisk. This motion lasted less than two seconds, from approximately 00:38 of the video until 00:40. At the time of this motion, pedestrians were walking into the frame, Sgt. Ryan walked between the camera and § 87(2)(b) and the camera pans down toward the ground and away from § 87(2)(b) § 87(2)(g)

PO Inoa denied that he entered § 87(2)(b)'s pockets, as the frisk was negative.

PO Dutton did not recall whether PO Inoa searched § 87(2)(b) PO Pizarro did not see PO Inoa search § 87(2)(b) Sgt. Ryan and PO Lee both testified that they were coming around from the other side of the van during the initial contact, and did not see PO Inoa search § 87(2)(b) as a result.

§ 87(2)(g)

Allegation F – Force: PO Ray Dutton used physical force against § 87(2)(b)

It is undisputed by virtue of the video footage and PO Dutton's testimony that he "shoved" § 87(2)(b) in the left arm, and that § 87(2)(b) fell to the ground.

§ 87(2)(b) testified that PO Dutton said something involving the word "fuck" before pushing him to the ground. He did not sustain any injuries as a result.

As discussed above, PO Dutton said that he feared for his safety because § 87(2)(b) was standing in close proximity to him. He "gave § 87(2)(b) a little shove" to create distance between himself and § 87(2)(b) because § 87(2)(b) was standing too close to him. PO Dutton shoved § 87(2)(b) in the left arm and said, "Take a fucking walk," at which point § 87(2)(b) "plopped himself down on the ground." PO Dutton said that he did not shove § 87(2)(b) hard enough to warrant him falling down, and he believed that he staged the fall.

According to Patrol Guide Procedure 203-11, when dealing with civilians officers must use the minimum necessary force (encl. 0A1 – B1).

§ 87(2)(g)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____

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